

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2019-290-WS

December 20, 2019

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| IN RE: Application of Blue Granite Water |) | MOTION OF THE OFFICE OF |
| Company for Approval to Adjust |) | REGULATORY STAFF FOR |
| Rate Schedules and Increase Rates |) | PARTIAL SUMMARY JUDGMENT |
| |) | REGARDING THE PROPOSED ANNUAL |
| |) | RATE ADJUSTMENT MECHANISM |

Blue Granite Water Company, Inc. (“Blue Granite” or “Company”) filed its Application for Approval to Adjust Its Rate Schedules and Increase Rates (“Application”) on October 2, 2019. The South Carolina Office of Regulatory Staff (“ORS”) files this Motion for Partial Summary Judgment pursuant to S.C. Code Regs. § 103-829 and South Carolina Rule of Civil Procedure 56 asserting it is entitled to a ruling as a matter of law that the annual rate adjudgment mechanism proposed by Blue Granite is unlawful and should not be approved.¹ ORS respectfully shows and requests of the Public Service Commission of South Carolina (“Commission”):

1. That the Commission is a state agency constituted pursuant to the laws of the State of South Carolina with its business offices located in Columbia, South Carolina and is “vested with the power and jurisdiction to supervise and regulate the rates and service of every public utility in this State.” S.C. Code Ann. § 58-5-210.
2. The ORS is charged with the duty to protect the public interest pursuant to S.C. Code Ann. §§ 58-4-10, *et seq.*
3. That Blue Granite is a corporation organized and existing under the laws of the State of Delaware, authorized to do business in the State of South Carolina, and a public utility, as

¹ ORS does not object to recovery of purchased water and sewer charges similar to Ocean Lakes Utilities, LP. *See* Order No. 2014-48.

defined by S.C. Code Ann. § 58-5-10(4), providing water and sewer service to the public for compensation in certain areas of South Carolina. (Application, ¶¶ 1, 2).

4. Blue Granite requests approval of an annual rate adjustment mechanism (“Mechanism”) for purchased water and sewer treatment expenses that results in the pre-approval of a rate increase sufficient to recover the deferral of changes in third-party service provider rates. (*See* Application, ¶ 19). According to the Application, deferrals would be recorded for 12-month periods beginning on the date rates are effective in this proceeding, and the Company would file for a rate adjustment within 60 days of the end of each annual deferral period. *Id.* The Mechanism entitles ORS and the Commission the ability to review and audit the rate change within 45 days of the rate adjustment filing. *Id.* Once that audit is complete, the Company will notify its customers of the rate adjustment within 15 days and the new rates automatically become effective 30 days thereafter. *Id.*
5. The Company describes in its proposed Tariffs the Mechanism’s impact to customer’s bills. For example, Blue Granite proposes the following for its Water Distribution Only Customers in Water Service Territory 1:

...

The commodity rate adjustment is calculated using customer and consumption data from the annual reconciliation period. The commodity rate adjustment is calculated by first finding the *average consumption of all water distribution customers for Water Service Territory 1 in the annual reconciliation period*. The average consumption is determined by taking the total water consumption for the annual reconciliation period and dividing it by the total number of water billing units for the annual reconciliation period. Next, the adjustment in purchased water expense caused by known and measurable changes in rates from third party wholesale providers is calculated. Then, the expense per billing unit is calculated by dividing the total change in purchased water expense by the annualized number of water billing units. Finally, the commodity rate adjustment required to recover or rebate the change in purchased water expenses is determined by dividing the expense per billing unit by the average consumption per 1,000 gallons. The commodity rate adjustment designed to recover the deferral balance amortization expense is adjusted

each year and reset to zero when a new base rate case is effective.
(emphasis added).

6. South Carolina Code Ann. § 58–5–210 grants the PSC the “power and jurisdiction to supervise and regulate the rates and services of every public utility in this State....”² The Commission has the power, “after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed and followed by every public utility in this State and the State hereby asserts its rights to regulate the rates and services of every [public utility].” S.C. Code Ann. § 58-5-210.
7. The Mechanism is prohibited by law because it fails to result in just and reasonable rates. The Mechanism fails to accurately and appropriately apportion the wholesale water and sewer treatment increase commensurate with any given customer’s actual usage. The customer’s calculated rate is based on average customer usage and not the specific customer’s usage. Put simply, the Mechanism does not assign the costs of wholesale water and sewer treatment directly to the customers who caused Blue Granite to incur the cost (cost causation) but creates a subsidy between customers. Further exasperating the unjust result of the Mechanism, the Company’s proposal results in increase costs borne by all Water Distribution customers in Service Territory 1 – *even if those water distribution customers did not receive water from the third-party provider that increased its wholesale rate.*³ It is clear that Blue Granite’s requested mechanism is not a true “dollar for dollar without markup” pass through. Compare, e.g., Order No. 2014-48, p. 2 (SCPSC Jan. 14, 2014); Order No. 2003-520 (SCPSC Aug. 29, 2003); Order No. 2002-285 p. 15-16 (SCPSC April 18, 2002).

Additionally, under the Mechanism, the costs that are passed through to customers are purchased water and sewer treatment expenses from third-party providers on an average consumption basis. This Mechanism initiates a rate adjustment between base rate filings to

² *Kiawah Property Owners Group v. Public Service Com'n of South Carolina*, 395 S.C. 105, 109 (2004).

³ The Company proposes this despite the fact that its water systems are not interconnected and are located in different geographic locations throughout the State.

recover the deferral of changes in third-party service provider rate. The Mechanism results in unjust rates and undue discrimination within the Water Distribution and Sewer Collection rate classes.

8. The Mechanism is unjust and unreasonable when it results in unpredictable and complicated rates. The Proposed Mechanism adds an element of confusion for customers because the rate calculation by Blue Granite relies upon average customer consumption of all water distribution customers. This confusion occurs for Sewer Collection customers as well.
9. The Mechanism also unreasonably shifts the cost for non-revenue water and sewer inflow and infiltration ("I&I") to the customers and fails to incentivize the Company to minimize non-revenue water and I&I. In this manner, the Mechanism shields the Company from the risk of under-recovery of third-party provider wholesale water and sewer costs by burdening its customers. While the Supreme Court dealt with fuel costs in *Hamm v. S.C. Pub. Serv. Comm'n*, 291 S.C. 119, S.E.2d 476 (1987), its ruling is instructive in this case. In *Hamm*, the Court said, "[r]esponsibility for fuel costs which are incurred because of irresponsible decision-making must be on the decision-makers. If a utility was permitted to pass these costs along to its customers, it would have no incentive to minimize fuel costs." *Hamm*, 291 S.C. at 123, 352 S.E.2d at 478. "If the utility has acted unreasonably, and higher fuel costs are incurred as a result, the utility should not be permitted to pass along the higher fuel costs to its customers." *Id.* (citing *Pub. Serv. Comm'n of Md. v. Baltimore Gas & Electric Co.*, 60 Md. App. 495, 483 A.2d 796 (1984); *Boston Edison Company v. Dept. of Pub. Utils.*, 393 Mass. 244, 471 N.E.2d 54 (1984); *Florida Power Corp. v. Cresse*, 413 So.2d 1187 (Fla.1982)). Likewise, the Commission must require Blue Granite to seek to minimize costs. Additionally, the Mechanism dilutes the price relationship between an individual customer's consumption and that customer's bill. By altering the price signal, the Proposed Mechanism promotes inefficient and "wasteful use of public utility services." See Order No. 82-2, Docket No. 80-378-E (Jan. 28, 1982) (citing James Bonbright,

Principles of Public Utility Rates (1961)). The Mechanism fails to require Blue Granite to minimize costs and promotes waste. It is therefore both unjust and unreasonable.

10. The Mechanism is prohibited by law because it seeks to take that which the Commission cannot give. The Commission “cannot allow parties to a contract”—for example a third-party water contract—“to take away the authority granted to this Commission” by the General Assembly. Order No. 2003-10, ¶5 (SCPSC Jan. 7, 2003); *see also* S.C. Code 58-5-210. Additionally, “[t]he PSC is a government agency of limited power and jurisdiction, which is conferred either expressly or impliedly by the General Assembly. *City of Camden v. South Carolina Pub. Serv. Comm’n*, 283 S.C. 380, 382, 323 S.E.2d 519, 521 (1984). While requesting autopilot ratemaking, Blue Granite has not proposed any procedures or standards by which the Commission would retain its lawful authority over the setting of utility rates were it to allow the Mechanism. Therefore, the Company’s Mechanism improperly seeks to contract away Commission authority to set just and reasonable rates and place it within the purview of the third-party wholesale water and sewer providers.
11. The Mechanism is prohibited by law because it fails to afford parties the opportunity to be heard.⁴ According to the Company’s proposal, the only parties that may “audit” the increase are ORS and the Commission.⁵ Additionally, the Mechanism fails to provide any accountability to the Commission, ORS, or ratepayers because the Mechanism fails to provide guidance in the event the Company fails the audit.⁶ This essentially renders the audit meaningless. The Commission ORS, interested customers, and other stakeholders must be given the opportunity to review, assess, and contest through the Commission’s well-established hearing process any increase that does not fairly apportion costs and usage. There must be an opportunity for

⁴ *See* S.C. Code ann. § 1-23-320.

⁵ The Consumer Advocate is notably excluded, which the Office of the Attorney General has deemed to be prohibited. *See* 1980 WL 121176 (S.C.A.G. Apr. 17, 1980).


⁶ Based upon the language explaining the Mechanism, it seems that even if the Company fails the audit, it still requires that the rates go into effect.

genuine due-process review of the costs that Blue Granite wishes to impose on its customers. *See* S.C. Code Ann. § 1-23-320.

12. The Mechanism is prohibited by law because it constitutes ratemaking and violates S.C. Code Ann. § 58-5-240(G). Ratemaking is the sole province of the Commission by South Carolina law. *See* S.C. Code § 58-5-210. “An important function of rate making is determining the overall rate of return which the utility is granted.” Order No. 18,978 (Docket No. 18,269), *Re Gen. Tel. Co. of the Se.*, 13 P.U.R.4th 24, 32 (Jan. 23, 1976). Blue Granite’s proposal may result in a determination of the entire rate structure and is thus prohibited. The rate adjustment mechanism requires an annual review of the Company’s cost allocation practices. Any pre-approval of all non-revenue water and I&I costs through the automatic and annual operation of the Mechanism consequently amounts to ratemaking and requires ongoing application of existing precedent and application of ratemaking principles to determine the recoverability of any proposed expense.
13. Blue Granite’s proposal asks the Commission to unlawfully abandon its authority as the General Assembly’s designated regulatory body over water and wastewater utilities and their rates. The Mechanism allows the Company to pass through all expenses it incurs for non-revenue water and I&I while withholding any requirement that the Company explain the prudence of its operations. The issues identified by ORS in this Motion underscore the heightened need for procedural protections that apply in a ratemaking proceeding and make clear that the Mechanism is unlawful.

WHEREFORE, ORS requests that the Commission:

1. Grant summary judgment to ORS on the issue of whether the Mechanism proposed by Blue Granite in its Application and the exhibits thereto is consistent with law and deny approval of the Mechanism.
2. Order such additional protections or relief which the Commission may deem necessary to protect the economic and due process rights of the Company’s ratepayers.



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